IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No.834 of 2004
in
Notice of Motion No.3493 of 2003
Notice of Motion No.3494 of 2003
Notice of Motion No.3495 of 2003
in
Short Cause Suit No.6954 of 2002

With

Appeal from Order (St.) No.29054 of 2004
in
Notice of Motion No.3494 of 2003
In
Short Cause Suit No.6954 of 2002

With

Appeal from Order (St.) No.29058 of 2004
In
Notice of Motion No.3495 of 2002
In
Short Cause Suit No.6954 of 2002

Mr.Pratap Gordhandas Kapadia. Appellant

Vs.

Mr.Deepak Ranjit Kapadia & Ors. Respondents

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Ms R.C.Nichani for the Appellant.

Shri A.K.Abhyankar with Shri S.N.Pradhan for respondent Nos.5 and 6.

Ms Asha Bhambwani for respondent No.7.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 5th NOVEMBER, 2004.

P.C.

1. Since common questions of law and facts arise in all these appeals, they were heard together and are being disposed of by this common order, by consent of the parties.

2. Upon hearing the learned advocates for the parties and on perusal of the impugned orders, it is seen that the Court below has not elaborately discussed the rival contentions of the parties and has not analysed all the materials on record before arriving at the finding which has been arrived at. Though, prima facie, considering the materials on record, the findings arrived at do not appear to be contrary to the materials on record, but at the same time it is necessary for the Court dealing with the applications of the nature which have been disposed of by the impugned orders, to deal with the rival contentions in relation to the materials on record in detail and arrive at an appropriate finding before disposing the application, and on this count alone with the consent of the parties, the impugned orders are hereby quashed and set aside and the matters are

remanded to the Court below to decide the Notices of Motion afresh, after hearing the parties and in accordance with the provisions of law and bearing in mind that the Court below has to deal with all the points sought to be raised by the parties and take into consideration all the materials which are placed on record before disposing of the matters. It is made clear that this Court has not expressed any opinion on merits of the cases and all the issues are kept open for consideration by the Court below. At the same time, it is made clear that till disposal of the Notices of Motion, the effect of the impugned orders shall not stand wiped of and it shall remain in force. At the same time, the Court below should not get influenced in any manner by these observations, nor by any of the observations made in the impugned orders, while disposing the Notices of Motion afresh.

3. The Appeals are accordingly disposed of in above terms with no order as to costs.

4. The parties to appear before the City Civil Court, Mumbai, in Notices of Motion Nos.3493, 3494 and 3495 of 2003 in S.C.Suit No.6954 of 2002 on 14th December, 2004 at 2.30 p.m. for taking further steps in the matters by the Court below. The Court below

shall dispose of the aforesaid Notices of Motion within a period of eight weeks from 14th December, 2004. Order accordingly.